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August 19, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Amendment of Parts 21 and 74 To Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage In Fixed Two-Way Transmissions -- MM Docket No. 97-217 and RM-9060:*
NOTICE OF EX PARTE COMMUNICATION

Dear Ms. Salas:

I am writing to report that on August 17, 1999, Merrill Weiss and the undersigned met on behalf of the over 110 licensees, system operators, equipment vendors and consultants that submitted the petition for rulemaking that commenced this proceeding (the "Petitioners") with Charles Dziedzic, Joseph Johnson, David Roberts and Kevin Harding of the Mass Media Bureau to discuss various issues raised by the *Report and Order on Reconsideration* ("ROR") in this proceeding.

During the course of the discussion, the Petitioners provided the staff with a listing of issues ripe for addressing in an *erratum* to the ROR, a copy of which is attached. In addition, the Petitioners discussed their concern that the rules adopted in the ROR required the filing of certain information in ASCII format that was graphically-based (such as shadow studies and other portions of interference analyses), and suggested that the information be filed in .PDF format instead. The Petitioners also sought clarification regarding the provisions in the ROR and the new rules addressing the circumstances under which channel shifting and swapping can occur. The parties also discussed the unintended implications of the elimination of note 22 to Section 101.147.

More substantively, the Petitioners expressed concern that allowing low power boosters to secure booster service areas prior to the first filing window and requiring applicants in the first filing window to provide interference protection to those booster service areas could afford some licensees an unfair advantage during that filing window and delay, if not preclude, the deployment of advanced telecommunications services by some service providers. They also noted their disagreement with the Commission's decision to deny grandfathered status to ITFS excess

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capacity leases that had initial terms expiring after March 31, 1997 but included automatic renewal provisions for a total term of no more than at 10 years duration. Along similar lines, the Petitioners noted their opposition both to the *ROR*'s retention of the policy barring ITFS licensees from agreeing that they will not assign their licenses without also assigning their excess capacity lease obligations and to the *ROR*'s refusal to eliminate certain elements from the notice that must be given prior to the installation of a response station near a registered receive site. The Petitioners also discussed the preclusive impact that could be felt by ITFS licensees from the granting of protected service areas to nearby point-to-point ITFS facilities. Finally, the discussion focused on certain ambiguities in Appendix D to the *ROR* and possible avenues for clarifying those ambiguities.

Please contact the undersigned should you have any questions regarding this *ex parte* presentation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul J. Sinderbrand', written in a cursive style.

Paul J. Sinderbrand

Counsel to the Petitioners

Attachment

cc: Charles Dziedzic
Joseph Johnson
David Roberts
Kevin Harding

PROPOSED ISSUES FOR ERRATUM TO APPENDIX C

- Page C-12 -- §21.904(a). There is an error in the formula at the end of the first and beginning of the second lines. The formula should read “33 dBW + 10 log(X/6) dBW.” The version in the new rules has the “10” and the “log” interchanged. This same error occurs at Page C-27, §21.913(e) near the beginning of the paragraph, at Page C-41, §74.935(a) at the end of the first and beginning of the second lines, and at Page C-62, §74.985(e) on the second line.
- Page C-12 -- §21.904(b). The last sentence in the last paragraph can be read in a manner that is misleading. In describing the formula used to calculate maximum EIRP where non-omnidirectional antennas are used, the sentence could lead one to believe that the first term, “+33 dBW,” must be adjusted before entering it into the formula. In fact, the adjustment is accomplished by the formula itself. If the last sentence is to be kept, it should be changed to read that “The first term of the equation above, ‘+33 dBW,’ is adjusted by the second term, ‘+ 10 log(X/6) dBW, based upon the ratio of 6 MHz to the subchannel or superchannel or 125 kHz channel bandwidth.’” Or, better yet, the last sentence can be omitted.
- Page C-21 -- §21.909(g)(8). In the second sentence, on the sixth line of the paragraph, the words “interference” and “overload” should be interchanged. This will maintain consistency in describing “block downconverter overload.” The same correction needs to be made at Page C-50, §74.939(g)(8), and at Page C-64, §74.985(h) in the next-to-last line.
- Page C-24 -- §21.909(n)(2)(i). The word “to” is required after the word “channel(s).”
- Page C-31 -- §21.938. The introductory note indicates that “paragraph (b) introductory text, and paragraphs (c)(4), (e) and (f) are revised to read as follows.” Revised Paragraph (b) follows, but the other revisions do not.
- Page C-34 -- §74.903(a)(6)(ii) and (iii). There are formulas of similar form in these two paragraphs. The version in (ii) uses subscripts for the two values, X_1 and X_2 . The version in (iii) uses un-subscripted numbers, $X1$ and $X2$. These should be consistent.
- Page C-35 -- §74.911(a)(3). The last word in the paragraph, “changes,” should be “stations.”
- Page C-36 -- §74.911(d) middle of the first sentence. The words “for the filing of applications for all major change applications, high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licenses,” should instead read “for the filing of applications for all major changes, high-power signal booster station, response station hub, and I channel point-to-multipoint transmission licenses.”
- Page C-36 -- §74.911(e) next to last line on the page. The spelling of the first word on the line, “application,” should be corrected.
- Page C-37 -- §74.911(e) near the middle of the paragraph as it appears on the page. The word “of” should be inserted between the words “filing” and “such” at the middle of the 8th line on the page.

- Page C-41 -- §74.935(e). In the parentheses on the second line, the example is misleading in that it implies that any variety of QPSK will have non-uniform power spectral density. This is not necessarily the case. The example should be revised to read “(e.g. unfiltered QPSK).”
- Page C-44 -- §74.939(b). §74.935(e) has been amended to allow for the transmission of digital signals with non-uniform power spectral density. However, §74.939(b) was not amended to conform and still requires that “ITFS response stations operating in this manner employ only digital modulation with uniform power spectral density....”
- Pages C-48 and C-61 -- §§ 74.939(e) and 74.985(c). As adopted in the *Report and Order*, Sections 74.939(e) and 74.985(c) provided that applications for response station hubs and high-power boosters “shall be deemed minor change applications.” Section 74.911(a)(2) was amended on reconsideration to provide that applications for hubs and high-power boosters “shall be considered major change applications,” but Sections 74.939(e) and 74.985(c) were not amended to conform.
- Pages C-55 through C-57 -- §74.939(m), (n), (o), (p), and (q), (r), (s) (t). It appears that paragraphs (q), (r), (s), and (t) were inadvertently retained after the rules adopted in the *Report and Order* were revised and the subject of those paragraphs incorporated into (m), (n), (o) and (p).
- Page C-56 -- §74.939(p)(2)(i). The word “to” should be inserted between “channel(s)” and “be” on the second line.
- Page C-59 -- §74.961(a). A period needs to be added to the end of the sentence on the third line after the value of the frequency tolerance “0.001%” so that the words “ITFS booster stations” begin a new sentence.